

**Letter of Findings: 01-20181826
Individual Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department agreed that Individual presented "substantial contrary evidence" establishing that he was not a full-year resident during 2013; Individual provided a copy of his Canadian passport and other documentation establishing that he was a resident elsewhere that year. However, based on evidence that he received Indiana source income during 2013, Individual was required to file a 2013 IT-40PNR return and remit Indiana individual income tax.

ISSUE

I. Individual Income Tax - Non-Filer / Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(e); IC § 6-1.1-12-37(f); IC § 6-3-1-3.5(a); IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-22.5](#); [45 IAC 3.1-1-23](#); [50 IAC 24-2-5](#); Government of Canada - Canadian Passports, <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-passports/canadian-eligibility-requirements.html>.

Taxpayer argues that the Indiana Department of Revenue erred when it assessed Taxpayer Indiana income tax with Taxpayer claiming he was not an Indiana resident during 2013.

STATEMENT OF FACTS

Taxpayer is an individual with a current Florida mailing address. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident during 2013 and was required to file and pay Indiana individual income tax. The Department issued proposed notices of assessment and - in the face of what the Department regarded as Taxpayer's failure to respond to the notices - took steps to collect the assessment. The matter was forwarded to the Department's collection agent which proceeded to place a levy on Taxpayer's bank account and to collect money from that account. Taxpayer objected stating the original notices of proposed assessment were never received. The Department agreed after finding that the original notices were returned to the Department as "undeliverable." The Department recognized its error, "backdated" the assessments, and returned the amount collected together with the attendant collection fees and costs.

On the ground that its initial residency analysis was correct, the Department proceeded to reissue updated assessments. In a letter sent to Taxpayer, the Department explained:

[Y]ou established your domicile in Indiana before the above listed tax year(s) by taking the Homestead Exemption deduction on your property taxes for [Indiana address] with [Taxpayer's wife]. In order to receive a homestead deduction, the property must be the individual's "principal place of residence." "Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence pursuant to [50 IAC 24-2-4](#). Even though you were working/living overseas your income is still taxable to Indiana since Indiana is your home of domicile.

Taxpayer responded January 2018 stating that he is a Canadian citizen who worked outside the United States during 2013. Taxpayer provided a copy of his Canadian passport issued in 2013 and his Canadian driver's license issued October 2014. Taxpayer's written response was sent from a Florida address.

Taxpayer's attorneys sent a letter January 2018 stating that the Taxpayer was a Canadian citizen, worked outside the United States during and prior to 2013, and did not own Indiana property. Taxpayer's representatives stated that Taxpayer and his wife filed separate 2013 federal returns and that Taxpayer's wife lived in Indiana during 2013. In support of Taxpayer's argument, Taxpayer's representative sent copies of Taxpayer and his wife's 2015 joint federal tax return. Taxpayer's representatives concluded that the assessments were incorrect on the ground that Taxpayer was not required to either file a 2013 Indiana income tax return or pay Indiana individual income tax because he was not "domiciled" in Indiana that year.

An administrative hearing was conducted during which Taxpayer and his representatives explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Non-File / Residency.

DISCUSSION

The issue is whether Taxpayer has met his burden of establishing that he did not have an Indiana domicile during 2013 and was not required to file for and pay Indiana individual income tax.

In this instance, Taxpayer's protest stems from the Department's assessment of additional individual income tax. As a threshold issue, all such tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

[45 IAC 3.1-1-23](#) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

(2) Taxpayer Moving from Indiana

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

...

(4) Part-Time Resident Individuals

Persons residing in Indiana but living part of the year in other states or countries will be deemed residents of Indiana unless it can be shown that the abode in the other state or country is of a permanent nature. Domicile

is not changed by removal therefrom for a definite period or for a particular purpose. A domicile, once obtained, continues until a new one is acquired

Recently, the Department revised the Adjusted Gross Income Tax regulations. Some of the revisions intended to clarify the definition of a person's domicile for Indiana income tax purposes and afford more considerations in determining a person's domicile. For reference sakes, this Letter of Findings cites to these regulations as guidance.

[45 IAC 3.1-1-22](#) (2017) states as follows:

(a) "Domicile" means a person's domicile is the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. **A person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state.** A person is domiciled in Indiana if he or she intends to reside in Indiana permanently or indefinitely and to return to Indiana whenever he or she leaves the state.

(b) A person is domiciled in a state or other place until such time as he or she voluntarily takes affirmative action to become domiciled in another place. **Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.**

(c) In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a permanent place of residence at that place. **The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**

(d) There is no one (1) set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the totality of facts, supported by objective evidence, in each individual case.

(Emphasis added).

[45 IAC 3.1-1-22.5](#) (2017) further outlines the factors in determining a person's domicile, as follows:

(a) The Department may require documentation from a person to evaluate domicile.

(b) The one hundred eighty-three (183) day and permanent place of residence threshold in IC [§] 6-3-1-12(b) and [\[45 IAC 3.1-1-21\]](#) is not a test for domicile.

(c) **A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and the person did more than one of the following:**

- (1) Claimed a homestead credit or exemption or a military tax exemption on a home in that state.
- (2) Voted in that state.
- (3) Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state.
- (4) Claimed a benefit on the federal income tax return based upon that state being the principal place of residence.
- (5) Had a place of employment or business in that state.

A person may rebut this presumption through the presentation of substantial contrary evidence.

(d) If a person's domicile is not resolved by subsection (c), the [D]epartment may consider additional relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:

- (1) maintained a driver's license or government issued identification card;

- (2) was registered to vote;
- (3) registered a vehicle;
- (4) claimed as dependents immediate family members who relied, in whole or in part, on the taxpayer for their support;
- (5) assigned or maintained a mailing address;
- (6) maintained bank accounts;
- (7) maintained active membership in a religious, social, cultural or professional organization;
- (8) received professional services; and
- (9) kept valuables or family heirlooms.

This list of additional, relevant factors is not exclusive.

(Emphasis added).

Thus, a new domicile is not necessarily created when an individual moves to a place outside of Indiana. Instead, the individual must move to the new location and have an intent to remain there indefinitely.

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his Wife lived for several years for the benefit of his Wife's health. Mr. Walton lived in the Indiana home "on account of the mental and physical condition of his Wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, Mr. Walton did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Id. (Internal citations omitted)(**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

Id. (Internal citations omitted)(**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile

terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

Id. at 1317-18 (**Emphasis added**).

Indiana law defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). "Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

The Department's records indicated that Taxpayer received 2013 Indiana W-2s (Wage and Tax Statements), 1099-B's (Proceeds from Broker and Barter Exchange Transactions), 1099-INT's (Interest Income), Form 5498's (IRA Contribution Information), and 1099-DIV's (Dividends and Distributions). Taxpayer's representative and tax preparer were asked to provide copies of these documents but were unable to do so. Therefore, there is a rebuttable presumption that Taxpayer received adjusted gross income derived from sources within Indiana. IC § 6-3-2-2(a).

As to the Homestead Credit, the Department was able to verify information that although the credit was claimed, the ownership of the house was in the name of Taxpayer's wife. The Department was also able to verify that Taxpayer had or has a Texas driver's license, had or has a Texas home, and previously registered his vehicles in Texas.

Taxpayer has also provided a copy of his Canadian passport issued in 2013 and a copy of his 2013 federal return listing Taxpayer's Florida address. Publicly available information establishes that "[y]ou must be a Canadian citizen to apply for a new Canadian passport." Government of Canada - Canadian Passports, <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-passports/canadian-eligibility-requirements.html>. (Last visited October 10, 2018).

However, the Department bears in mind that the Tax Court has held that "each assessment and each tax year stands alone." *Miller Brewing Co.*, 903 N.E.2d at 69. Given the totality of the circumstances, the Department is prepared to agree that for the year 2013, Taxpayer has met his burden of establishing that he was not an Indiana resident during 2013 because Taxpayer presented "substantial contrary evidence" contradicting the Department's determination that he was required to file and pay Indiana individual income tax as a full-year "resident." However, given that Taxpayer - based on the evidence available to the Department - received Indiana source income during 2013, Taxpayer is required to file a 2013 IT-40PNR (Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return). IC § 6-3-2-1(a); IC § 6-3-2-2(a). Thus, Taxpayer is required to file a 2013 IT-40PNR return and remit Indiana tax.

FINDING

Taxpayer's protest is sustained provided that he files the required 2013 Indiana IT-40PNR return and pays the amount due within 30 days from the date this decision is issued and pays whatever tax may be due. In the event Taxpayer fails to file the IT-40PNR return, Taxpayer's protest is respectfully denied.

October 17, 2018

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